

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

JOSEPH SIMMONS,	:	
Plaintiff,	:	
	:	
v.	:	Civil No. 2:22-cv-01644-JMG
	:	
OFFICER WILSON,	:	
Defendants.	:	

ORDER

AND NOW, this 9th day of March, 2023, upon consideration of Plaintiff’s Unopposed Motion for Leave to Amend the Complaint (ECF No. 34), **IT IS HEREBY ORDERED** Plaintiff’s Unopposed Motion for Leave to Amend the Complaint (ECF No. 34) is **GRANTED**.¹ The Clerk

¹ Plaintiff seeks to file a third amended complaint with the consent of opposing counsel in this case. *Pro se* Plaintiff Joseph Simmons initially filed a complaint against several City of Philadelphia officials and employees on November 5, 2021. *See* Compl. at 2, Simmons v. Gianetta et al, No. 21-04962 (E.D. Pa. Nov. 5, 2021). The Court dismissed Plaintiff’s *pro se* Complaint in part. *See* Memo. Op. & Order at 6, 7, Simmons v. Gianetta et al, No. 21-04962 (E.D. Pa. Apr. 27, 2022). So several of Plaintiff’s independent claims against various defendants remained. *See id.* The Court also severed Plaintiff’s claims, and opened new civil actions—including the present action. *See* Order at 7, Simmons v. Gianetta et al, No. 21-04962 (E.D. Pa. Apr. 27, 2022).

On June 7, 2022 Plaintiff filed an Amended Complaint in the present action stating civil rights claims under Section 1983. *See* ECF No. 5. The Court dismissed Plaintiff’s failure to protect claim without prejudice, and provided Plaintiff with thirty (30) days to amend the claim. *See* ECF No. 11 at 2. Outside of the Court’s thirty-day window, counsel entered their appearance on behalf of Plaintiff. ECF Nos. 12, 13, 14. Plaintiff, now with the representation of counsel, then filed an Unopposed Motion for Leave to File a Second Amended Complaint on December 14, 2022. *See* ECF No. 23. Plaintiff filed a Second Amended Complaint on December 27, 2022 with the Court’s grant of leave to file. *See* ECF No. 25; *see also* ECF No. 24 (Court’s Order granting Plaintiff’s Motion to File an Amended Complaint). And, in response, Defendants City of Philadelphia, Warden Michele Farrell, Warden Nancy Gianetta, and Prison Commissioner Blanche Carney moved to dismiss Plaintiff’s Second Amended Complaint. *See* ECF No. 32.

Before the Court is Plaintiff’s Unopposed Motion for Leave to Amend the Complaint. *See* ECF No. 34. Plaintiff moves to file the Amended Complaint “[i]n coordination with counsel for Defendants.” *Id.* at 5. Plaintiff further avers the Amended Complaint “seeks to add defendants and identify those previously unknown.” *Id.* at 6. And Plaintiff “also withdraws certain claims

of Court is **DIRECTED TO DOCKET** Exhibit A to Plaintiff's Motion for Leave to Amend the Complaint (ECF No. 34) as "Plaintiff's Third Amended Complaint."

IT IS FURTHER ORDERED Defendants' Motion to Dismiss (ECF No. 32) is **DENIED AS MOOT**.

BY THE COURT:

/s/ John M. Gallagher
JOHN M. GALLAGHER
United States District Court Judge

seeking individual liability for certain policy makers and a claim for the deprivation of medical treatment." *Id.*

Federal Rule of Civil Procedure 15 provides " . . . a party may amend its pleading only with the opposing party's written consent or the court's leave . . . when justice so requires." FED. R. CIV. P. 15(a)(2) (emphasis added). Plaintiff avers his present Motion for Leave to File an Amended Complaint is unopposed. *See generally* ECF No. 34. And "[o]n February 15, 2023, counsel Defendant City of Philadelphia, Commissioner Carney, Warden Farrell and Warden Gianetta provided Plaintiff with written consent to file an amended complaint" *Id.* at 6. The Court also notes Defendants have not since moved in opposition of Plaintiff's Motion for Leave to File. Accordingly, the Court grants Plaintiff's Unopposed Motion for Leave to File an Amended Complaint.